

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 94 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO
-

TRIVEDI NILESH PRAVINCHANDRA

Versus

DISTRICT MAGISTRATE

Appearance:

MR YOGESH S LAKHANI for Petitioner
MR KT DAVE, AGP, for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 11/04/2000

ORAL JUDGEMENT

1. Ms. Yamini Desai, learned advocate appearing for Mr. Lakhani, learned advocate for the petitioner, produces bunch of papers received by the detenu. It be taken on record.
2. District Magistrate, Bhavnagar, passed an order

on October, 26, 1999, detaining-Trivedi Nilesh Pravinchandra under the provisions of Section (1) of the Gujarat Prevention of Anti-Social Activities Act, 1985 ("PASA Act" for short).

3. The detaining authority branded the detenu as a dangerous person. For that purpose, the authority took into consideration four offences registered against the detenu as well as statements of three witnesses whose identity is not disclosed by the detaining authority in exercise of powers under Section 9(2) of the PASA Act and came to conclusion that the petitioner is required to be immediately prevented from pursuing his illegal and anti-social activities. The authority also observed that it is not possible to resort to less drastic remedies and the petitioner is, therefore, required to be detained under the provisions of the PASA Act.

4. The detenu challenges the order of detention on various counts. Ms. Yamini Desai appearing for learned advocate, Mr. Lakhani, for the petitioner, submitted that there is improper exercise of powers under Section 9(2) of the PASA Act. The detaining authority has verified the statements of anonymous witnesses on October 26, 1999 and on that very day, the order is passed. The authority, therefore, had no time to undertake an appropriate exercise before exercising the powers under Section 9(2) of the PASA Act. She further submitted that the offences registered against the detenu do not indicate any breach of public order and, therefore, the order based on the statements and offences deserves to be quashed and set aside. She urged that the petition may be allowed, the impugned order may be quashed and set aside and the petitioner-detenu be directed to be set at liberty.

5. Mr. Dave, learned Assistant Government Pleader, has opposed this petition. He submitted that as many as four offences are registered against the detenu. There are statements of three anonymous witnesses. The detaining authority has recorded a subjective satisfaction as regards the activity of the detenu and the need for his detention and, therefore, there is no need for any interference and the petition may, therefore, be dismissed.

6. Considering rival side contentions, it may be noted that the statements of anonymous witnesses have been recorded on October 8, 1999. They have been verified by Dy.S.P. on October 16, 1999 and by the detaining authority on October 26, 1999, by putting a one

word verification and the order is passed on that very day, i.e. October, 26, 1999.

7. It is clear from the grounds of detention that the detaining authority has taken into consideration the statements of two anonymous witnesses. The authority came to a conclusion that the fear expressed by these witnesses is correct and genuine and, therefore, the authority exercised powers under Section 9(2) of the PASA Act by not disclosing the identity of the witnesses. This Court is at loss to appreciate how the detaining authority could have arrived at this conclusion in such short spell. The detaining authority has not filed any affidavit in reply. It is, therefore, not possible to know as to what were the factors and material considered by the detaining authority besides the statements of the anonymous witnesses to come to conclusion that the fear expressed by the witnesses was genuine, that the incidents stated by the witnesses were correct and that there was need for exercise of powers under Section 9(2) of the PASA Act.

8. Similar such situation arose before a Division Bench of this Court in the case of Kalidas Chandubhai Kahar v. State of Gujarat & Ors., 1993(2) GLR 1659, where the statements were verified on 16th October, 1992 and the order was passed on 17th October, 1992 and the Division Bench said that exercise of powers under Section 9(2) of the PASA Act was improper. This improper exercise of powers under Section 9(2) of the PASA Act was held to be detrimental to the right of the detenu of making an effective representation contemplated under Article 22(5) of the Constitution. The order of detention was, therefore, quashed. The facts of the present case squarely fall in line with the facts of that case. The order of detention, therefore, stands vitiated in the instant case as well and the petition deserves to be allowed on this count alone.

9. Apart from the above aspects, it may be noted that the detaining authority has taken into consideration four offences registered against the petitioner. Three offences relate to theft of two wheeler automobiles, one offence is registered for misappropriation of an Aqua Guard Water Purifier. Having gone through the papers relating to these cases supplied to the detenu along with the grounds of detention (meaning thereby that they have been relied upon by the detaining authority), this Court does not find any material to indicate any disturbance to public order and, therefore, the subjective satisfaction

arrived at by the detaining authority that the activities of the detenu disturb the public order and are detrimental thereof is without any basis. The satisfaction, therefore, cannot be considered to be genuine. The result is that the authority could not have relied upon the registered offences. The statements would get vitiated on account of improper exercise of powers under Section 9(2) of the PASA Act and, therefore, the order of detention gets vitiated. The petition, therefore, deserves to be allowed.

10. In view of the above discussion, the petition is allowed. The impugned order of detention dated October 26, 1999 passed against the detenu is hereby quashed. The detenu-Trivedi Nilesh Pravinchandra is ordered to be set at liberty forthwith, if not required in any other matter. Rule is made absolute with no orders as to costs.

[A.L. DAVE, J]

gt